Supreme Court, U.S.
FILED

00 136 JUL 17 2000

OFFICE OF THE CLERK

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

O.L. Harrison, William Harrison, Gloria Hamilton, Sandra Harrison, and The Estate of Susan Harrison White, Deceased,

Petitioners,

v.

Joseph K. McGowen and Harris County, Texas,

Respondents.

On Petition for Writ Of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

PETITION FOR WRIT OF CERTIORARI

Alan D. Bynum*
5847 San Felipe, Suite 1450
Houston, Texas 77057-3009
Telephone: (713) 223-0032

Counsel for Petitioners

*Counsel of Record

48pp

QUESTIONS PRESENTED

(1) Whether the Court of Appeals erred in reversing the District Court's judgment and dismissing Harris County from the case, finding that there was insufficient evidence that an adequate scrutiny of the background of a person hired as a deputy sheriff would have lead a reasonable policymaker for the county to conclude that the plainly obvious consequence of its hiring decision would be that persons such as petitioners would be deprived of their federally protected rights.

(2) Whether the Court of Appeals erred in reversing the District Court's judgment and dismissing Harris County from the case, finding that there was insufficient evidence that that local government's hiring procedures -- as applied over time to multiple applicants for the position of deputy sheriff and applied without deviation in the instant case -- constituted a deliberate indifference to the rights of persons with whom its deputy sheriffs came into contact so as to support liability under 42 U.S.C. §1983.

PARTIES TO THE PROCEEDING

Petitioners

Jason Aguillard, O.L. Harrison, William A. Harrison, Sandra Harrison, Gloria Hamilton, and the Estate of Susan Harrison White.

Respondents

Joseph K. McGowen and Harris County, Texas.

TABLE OF CONTENTS

QUESTIONS PRESENTED.....i

PARTIES TO THE PROCEEDING.....ii

TABLE OF CONTENTS.....iii

TABLE OF AUTHORITIES.....v

OPINIONS BELOW.....1

JURISDICTION.....1

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED.....2

STATEMENT OF THE CASE.....2

ARGUMENT FOR GRANTING THE WRIT.....4

A. It was a plainly obvious consequence of Harris County's decision to hire Deputy McGowen that persons such as petitioners would be deprived of their federally protected rights.....5

B. Harris County's hiring procedures – as applied over time to multiple applicants for the position of deputy sheriff and as applied without deviation in the instant case –

constituted a deliberate indifference to the rights of persons with whom its deputy sheriffs came into contact so as to support liability under 42 U.S.C. §1983.....9

CONCLUSION.....15

APPENDIX

Appendix A
Fifth Circuit Opinion, 3/15/00.....1a

Appendix B
District Court Memorandum Opinion, 10/10/96....14a

Appendix C
Fifth Circuit Order Denying Petition for Rehearing, 4/20/00.....21a

Appendix D
District Court Amended Final Judgment, 1/31/97.....24a

TABLE OF AUTHORITIES

Cases

Board of Comm'rs of Bryan County v. Brown,
520 U.S. 397 (1997).....4,5,8,9,10

Canton v. Harris,
489 U.S. 378 (1989).....4,5,8,9

Information Communication Corp. v. Unisys **Corp.**,
181 F.3d 629 (5th Cir. 1999).....9

Monell v. New York City Dept. of Social Servs.,
436 U.S. 658 (1978).....4

Newport v. Fact Concerts, Inc.,
453 U.S. 247 (1981).....4

Owen v. City of Independence,
445 U.S. 622 (1980).....4

Pembaur v. Cincinnati,
475 U.S. 469 (1986).....4

Statutes

28 U.S.C. §1254(1).....1

28 U.S.C. §1343.....2

42 U.S.C. §1983.....2,4,16

Other Authorities

Jeffries, *In Praise of the Eleventh Amendment and Section 1983*, 84 VA.L.REV. 47 (1998).....4

PETITION FOR WRIT OF CERTIORARI

Petitioners respectfully petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit in this case.

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 207 F.3d 226 (5th Cir. 2000). A copy of the Opinion is included in the Appendix at Appendix A at 1a-13a. The Opinion of the District Court for the Southern District of Texas is not published and is included in Appendix B at 14a-20a. The District Court ordered entry of the final judgment on January 31, 1997, which is printed in Appendix D at 24a-25a.

JURISDICTION

The United States Court of Appeals for the Fifth Circuit issued its Opinion on March 15, 2000. On March 29, 2000, Petitioners filed a Petition for Rehearing which the United States Court of Appeals denied on April 20, 2000 (App. C at 21a-23a).[1] This Petition for Writ of Certiorari is filed within 90 days of the denial of the Petition for Rehearing. The Court's jurisdiction is invoked pursuant to 28 U.S.C. §1254(1).

---

[1]Citations to "App." are to the appendix filed with this Petition for Writ of Certiorari pursuant to Supreme court Rule 14(i).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

42 U.S.C. § 1983 reads in pertinent part as follows:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress...

STATEMENT OF THE CASE

Petitioners sued Harris County, Texas ("Harris County") and former Harris County Deputy Sheriff Joseph K. McGowen ("McGowen") for civil rights violations arising from McGowen's killing of Susan Harrison White.[2] The district court had jurisdiction over the original action pursuant to *28 U.S.C. §1343.* The case was tried to a jury and the jury returned a verdict awarding a combined $4,320,000.00 in compensatory damages. The jury also awarded punitive damages against McGowen in the amount of $1,000,000.00.[3]

---

[2]R. 2 (859-871).

[3]R. 8 (1976-1981); App. D.

The District Court entered judgment on January 31, 1997. (App. D).

Respondents filed an appeal with the Court of Appeals for the Fifth Circuit. On March 15, 2000, the Court of Appeals vacated the District Court's judgment as to McGowen and remanded it for retrial[4], and reversed the District Court's judgment as to Harris County and dismissed Harris County from the suit. Notwithstanding McGowen's long history of previous erratic and assaultive behavior with several other police agencies, the Court of Appeals found the evidence insufficient to support a finding that Harris County's failure to adequately scrutinize McGowen's background prior to hiring him constituted deliberate indifference. (App. A at 11a). And notwithstanding the fact that Harris County's employees testified that they followed the county's hiring procedures without deviation with respect to McGowen's hiring, and notwithstanding the fact that there was no evidence that those procedures were negligently implemented, the Court of Appeals, none the less, concluded that "[w]hile the county may have been negligent in its employment decision, the magnitude of its error does not reach constitutional cognizance." (App. A at 11a). Petitioners' petition for panel rehearing was denied on April 20, 2000.

---

[4]The Court of Appeals found that since the District Court had given preclusive effect to McGowen's Texas state criminal conviction for murder, and since the Texas court of appeals had thereafter reversed the murder conviction on appeal, the judgment against McGowen in the instant case must be vacated and remanded for a new trial on the merits. (App. A at 13a).

ARGUMENT FOR GRANTING WRIT

Overruling prior law, this Court with its decision in ***Monell v. New York City Dept. of Social Servs.***, *436 U.S. 658 (1978)* held that local governments, such as Harris County, may be liable under ***42 U.S.C. §1983*** for civil rights violations. Local governing bodies can be sued under *§1983* not only for official policies, but also for practices which are so permanent and well settled as to constitute a "custom or usage" with the force of law. ***Monell***, *supra*, at *691*. Liability can not be imposed, however, solely on a *respondeat superior* theory, ***Monell***, *supra*, at *691;* Jeffries, *In Praise of the Eleventh Amendment and Section 1983*, 84 VA.L.REV. 47 (1998).

In order to avoid the risk of imposing *respondeat superior* liability, not only must a plaintiff identify a policy or custom of the local governing body, but he must also show that the policy or custom caused the constitutional violation. ***Monell***, *supra*, at *694*, ***Pembaur v. Cincinnati***, 475 U.S. 469, 480-481, (1986), ***Canton v. Harris***, 489 U.S. 378 (1989).

In cases where the local government's action itself violates federal law [*e.g.* ***Owen v. City of Independence,*** 445 U.S. 622 (1980) where city counsel censured and discharged an employee without a hearing; or ***Newport v. Fact Concerts, Inc.,*** 453 U.S. 247 (1981) where city counsel canceled a concert license after a dispute regarding content] or where the local government's policy maker specifically directs the action [*e.g.* ***Pembaur***, *supra,* where a county prosecutor directed deputies to enter plaintiff's business to serve capiases on third parties] these issues of fault and causation are straight forward. ***Board of Comm'rs of Bryan County v. Brown***, 520 U.S. 397, 340 (1997).

In cases, however, where neither of these situations apply [*e.g* ***Canton v. Harris***, *supra*, concerning inadequate training of shift supervisors at city jail led to deprivation of rights; or ***Bryan County***, *supra*, concerning inadequate scrutiny of the background of an applicant for county employment] it must be shown that the unconstitutional policies amount to a deliberate indifference to the rights of the persons affected. ***Canton***, *supra*, at 388.

A. It was a plainly obvious consequence of Harris County's decision to hire Deputy McGowen that persons such as petitioners would be deprived of their federally protected rights.

During his duty with several previous police forces,[5] McGowen had demonstrated repeated episodes of erratic behavior and a proclivity to violence establishing a pattern of constitutional violations such that his use of excessive force was a plainly obvious consequence of the hiring decision.[6]

If Harris County's policies, procedures, and customs had been adequate, those whose duty it was to scrutinize McGowen's background prior to hiring him as a deputy sheriff would have learned that McGowen's supervisory critique when

---

[5]McGowen had previously served on at least three different police forces -- the Tomball Police Department, the Houston Police Department, and the Harris County Precinct Four Constables' Office -- and was ineligible for rehire with each.

[6]Harris County Constables' Internal Investigation Report (Pltfs' Ex. No. 422), R.30(994).

he left the Houston Police Department described McGowen as having a lack of maturity and a general bad attitude, that his actions turned from disrespectful to mutinous, that he was a disruptive influence, that he had a form of crusader arrogance, and that he threatened the mother of a juvenile with whom he had involved himself.[7] They would have known that Houston Police Department officers and supervisors described McGowen as being immature with a negative attitude,[8] that he wanted to ride "where the women were", and that he served as a source of agitation.[9] They would have learned further that while McGowen was an officer with the constable's office, he had struck a civilian in the head with a pistol.[10]

Moreover, the connection between McGowen's background with policing agencies for whom he had previously been employed and the specific constitutional violation alleged in the instant case is strong. While previously employed as an officer for the Houston Police Department, McGowen became involved with a juvenile and the mother of that juvenile[11].

---

[7]Houston Police Department Supervisory Critique of Separated Employee (Pltfs' Ex. No. 414) R.28(673).

[8]Houston Police Department Memo (Pltfs' Ex. No. 415) R.28(673).

[9]Houston Police Department Inter Office Correspondence (Pltfs' Ex. No. 416) R.28(673).

[10]Harris County Constables' Internal Investigation Report (Pltfs' Ex. No. 422) R. 30 (985).

[11]Houston Police Department Supervisory Critique of Separated Employee (Pltfs' Ex. No. 414) R.28(673).

Similarly, in the instant case McGowen became involved with Jason Aguillard and that juvenile's mother, Susan Harrison White. Just as McGowen threatened the mother of the juvenile with arrest during his time as a Houston Police Officer[12], McGowen improperly obtained a warrant to arrest Susan Harrison White by "[e]mbellishing White's statements to the point of fabrication" *Court of Appeals Opinion* (App. A at 5a). Just as McGowen's background chronicled a pattern of improper behavior toward women during his time as a Houston Police Officer (*e.g.* he liked to "ride where the women were" according to a Houston Police Department Report; on one occasion it was necessary for a Houston Police Department supervisor to be called to the scene of an accident where McGowen was mistreating a woman "because she had a big mouth;" and female officers did not want to ride with him under any circumstance)[13], McGowen sexually harassed Susan Harrison White[14]. Just as McGowen's background showed that he was willing to use his gun to pistol-whip a citizen during his

---

[12]McGowen's Houston Police Department supervisor reported that McGowen threatened the juvenile's mother with arrest and notwithstanding his supervisor's order to cease his involvement, he continued his involvement with the juvenile until the juvenile's mother hired a lawyer to get a restraining order. Pltfs' Exs. Nos. 414 & 416.

[13]Houston Police Department Inter Office Correspondence (Pltfs' Ex. No. 416) R.28(673).

[14]R.31 (1197) and R.31 (1186).

time with the Harris County Precinct Four Constable's Office[15], McGowen used his gun to shoot Susan Harrison White.

Although ***Bryan County*** requires "a finding that *this* officer was highly likely to inflict the *particular* injury suffered" ***Bryan County***, *supra*, at 412, *it does not require that he had in fact previously inflicted that particular injury on another, only that it was likely that he would do so.* The Court of Appeals' finding that "McGowen had never wrongfully shot anyone before..." (App. A. at 11a) sets the bar too high. What is required is a link between the background of the officer and the constitutional violation alleged, ***Bryan County***, *supra*, at 411 and at 413, ftnt 1. The evidence in this case is sufficient to establish that link between McGowen's background with other law enforcement agencies and the constitutional injuries he inflicted. By requiring that link, this Court in ***Bryan County*** did not change the existing legal standard.

> We do not suggest that a plaintiff in an inadequate screening case must show a higher degree of culpability than the "deliberate indifference" required in *Canton v. Harris*, 489 U.S. 378 (1989). Furthermore, in assessing the risks of a decision to hire a particular individual, we draw no distinction between what is "so obvious" or "so likely to occur" and what is "plainly obvious." The difficulty with the lower courts' approach is that it fails to connect the background of the particular officer hired in this case to the particular constitutional violation the

---

[15]Harris County Constables' Internal Investigation Report (Pltfs' Ex. No. 422) R.30 (994).

> respondent suffered. *Supra,* at 412. Ensuring that lower courts link the background of the officer to the constitutional violation alleged does not complicate our municipal liability jurisprudence with degrees of "obviousness," but seeks to ensure that a plaintiff in an inadequate screening case establishes a policymaker's deliberate indifference-that is, conscious disregard for the known and obvious consequences of his actions. Id at 413, ftnt 1.

When viewing all the evidence of McGowen's record as a law enforcement officer with all reasonable inferences most favorable to petitioners, ***Information Communication Corp. v. Unisys*** **Corp.**, 181 F.3d 629, 633 (5th Cir. 1999), it is apparent that the district court's denial of Harris County's Rule 50 motion for judgment as a matter of law was not improper, even under the standards later enunciated out by this Court in ***Bryan County***. The decision of the Court of Appeals is inconsistent with the decisions of this court.

B. Harris County's hiring procedures -- as applied over time to multiple applicants for the position of deputy sheriff and as applied without deviation in the instant case -- constituted a deliberate indifference to the rights of persons with whom its deputy sheriffs came into contact so as to support liability under 42 U.S.C. §1983.

Unlike the situation in ***Bryan County,*** *supra,* where the plaintiff did not contend that the Sheriff's hiring practices were generally defective, but rather sought to "trace liability to what can only be described as a deviation" from the sheriff's ordinary

hiring practices, ***Bryan County, supra,*** at 408, in the instant case both of the background investigators involved, as well as each of their supervisors, testified that ***Harris County's policies, procedures, and customs were followed without deviation*** in conducting the background investigation of McGowen.[16] In fact, Harris County did not contend otherwise and presented no evidence of any deviation from its policies, procedures, and customs in the background investigation of McGowen. To the contrary, the testimony was that these policies, procedures, and customs were applied over time to multiple employees.[17] It was these policies, procedures, and customs, rather than a one-time negligent administration of the program, that was the moving force behind the constitutional violations.[18]

When Joseph McGowen first applied for a position as a reserve officer with the Harris County Sheriff's Department,[19] Bruce Paige, a reserve detective, was assigned the task of investigating McGowen's background as a part of the pre-employment procedure. Detective Paige testified that at that time he was a skilled and knowledgeable background investigator with knowledge of the policies, procedures, and customs within the reserves at the Harris County Sheriff's Department regarding background investigations,[20]. This

---

[16]Investigators: R. 28 (594), R. 29 (817). Supervisors R. 30 (1126), R. 30 (1005).

[17]R. 28 (593).

[18]R. 28 (594).

[19]Pltfs' Ex. No. 426.

[20]R. 28 (590).

detective testified that with respect to the background investigation that he did regarding McGowen, he "followed those policies and procedures to a 'T'."[21] In fact, no one has testified that there was any deviation from Harris County's policies, procedures, or customs in the investigation of McGowen's background. The evidence is undisputed that Harris County's policies, procedures, and customs were strictly followed by all Harris County employees involved in McGowen's background investigation.[22]

Other than a general aspirational statement in its policy and ethic's manual,[23] the policy, procedures, and customs, of the Harris County Sheriff's Department regarding pre-employment background investigations were unwritten.[24] Those policies, procedures, and customs did not require a background investigator to contact an applicant's supervisor at previous places of employment, did not require him or her to contact each former employer, did not even require him or her to contact an applicant's immediately preceding employer, did not require him or her to contact, in this case, McGowen's former supervisor at

---

[21]Detective Paige testified:

"Q: Now, ... in connection with the background investigation that you did on Mr. McGowen, ... you followed those policies and procedures to a 'T'?

A: Yes, sir."

R. 28 (594)

[22]R. 28 (594); R. 29 (817); R. 30 (1126).

[23]Pltf's Ex. No. 408; R. 28 (716); R. 30 (1060).

[24]R. 28 (593); R. 29 (815); R. 30 (1054).

the Houston Police Department, did not require him or her to contact the person who rode with McGowen at Houston Police Department, and did not require him or her to check his supervisory critiques, grievance council records, or appeal board records at Houston Police Department.[25] Even if, as in the instant case, an applicant wrote in his employment application that he had left his position with the Houston Police Department because of slanderous allegations of other officers, Harris County's policies, procedures, and customs, did not require a background investigator to inquire about those allegations.[26] Likewise, if, as in the instant case, an applicant wrote in his employment application that he was ineligible for rehire at the Houston Police Department, Harris County's policies, procedures, and customs did not require the background investigator to find out why the applicant made such a representation.[27] Nor did Harris County's policies, procedures, and customs require a background investigator to have the results of a polygraph examination before making his report.[28] In fact Harris County's policies, procedures and customs did not even require the background examiner to determine the suitability of the applicant for employment.[29]

While McGowen's application for a position as a Harris County Reserve Deputy was pending, he applied to be a regular

---

[25]R. 28 (623 - 633).

[26]R. 28 (634).

[27]R. 28 (681).

[28]R. 28 (684); Pltfs Ex. No. 430.

[29]R. 28 (786).

deputy.[30] Detective Lawrence Bush was assigned the task of doing the background investigation. As had Detective Paige, Detective Bush followed Harris County's policies, procedures and customs to a "T".[31] Like the policies, procedures, and customs of the Reserves, Detective Bush testified that the policies, procedures, and customs of the Regulars did not require him to contact supervisors at previous employment, did not require him to contact all previous employers, did not require him to contact people not on the applicant's list of references, and did not require him to find the supervisory critique, grievance counsel report, or appeal board records at the former law enforcement agencies where the applicant had worked.[32] Since the policies, procedures and customs that Detective Paige had worked under did not require him to document the persons he had interviewed, Detective Bush did not know who Detective Paige had interviewed.[33]

The polygraph examination of McGowen that was done in connection with McGowen's employment application revealed, according to the polygraph examiner's report, that

---

[30]R. 29 (814).

[31]Detective Bush testified:

"Q: Can we be assured that when you did the background investigation on Mr. McGowen, that you followed the policies, procedures, and customs... to a 'T'?

A: Yes."

R. 29 (23).

[32]R. 29 (840-842).

[33]R. 29 (841).

"additional research in his employment history background is warranted."[34] The procedures of the Sheriff's department did not require Detective Bush to do that additional research.[35] In fact, those procedures allowed Detective Paige to make his report before the polygraph results were known.[36]

After Deputy McGowen was hired, he was assigned as a contract deputy to patrol the neighborhood where Susan Harrison White lived with her son, Jason Aguillard. During the months and days before she was shot by Deputy McGowen, Susan Harrison White made complaints to ranking officers of the Harris County Sheriff's department that she was being sexually harassed by Deputy McGowen.[37] The policies of the Sheriff's Department with regard to these complaints did not require any action or follow up until an official sworn complaint had been filed.[38]

Not only were the policies, procedures, and customs regarding background investigations of applicants to the Harris County Sheriff's Department inadequate, but Harris County's policies and procedures for handling citizen's complaints were also deficient. Captain C. J. Harper of the Harris County Sheriff's Department testified that Susan Harrison White had

---

[34]Polygraph Report (Pltfs' Ex. No. 443) R.29(821).

[35]R. 29 (845).

[36]Pltfs' Ex. No. 430.

[37]R. 31 (1186, 1197, and 1198); R. 31 (1239).

[38]R. 31 (1224).

complained to him on more than one occasion that McGowen was sexually harassing her[39] - the first of these complaints occurring months before she was killed by McGowen.[40] He made no written record of these complaints,[41] and did nothing other than advise her of the avenues open to her to pursue a complaint.[42] Likewise, Lieutenant Coons of the Harris County Sheriff's Department, who was McGowen's supervisor, did nothing when Susan Harrison White complained to him about McGowen's sexual harassment other than calling McGowen in and asking him about the allegations.[43] In fact, Major Jorge, the commander of the internal affairs division of the Harris County Sheriff's Department at all times relevant to this suit, testified that under the policies, procedures, and customs of the Harris County Sheriff's Department, a complaint will not be processed unless it is sworn and in a written form.[44]

CONCLUSION

The evidence is sufficient to support the jury's findings that the policies, procedures, and customs of Harris County - which were followed without deviation by Harris County's

---

[39]R. 31 (1197).

[40]R. 31 (1186).

[41]R. 31 (1203).

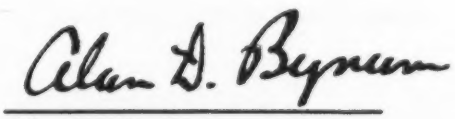
[42]R. 31 (1194).

[43]R. 31 (1239).

[44]R. 31 (1224).

employees - were constitutionally inadequate. In view of McGowen's previous law enforcement history, it was a plainly obvious consequence of the hiring decision that persons such as petitioners would be deprived of their federally protected rights. The policies, procedures, and customs of Harris County, Texas did constitute a deliberate indifference to the rights of persons with whom its deputies came in contact so as to support liability under §1983. The Court of Appeals erred when it reversed and dismissed Harris County from this suit.

Petitioners respectfully pray that a writ of certiorari should issue to review the Judgment and Opinion of the United States Court of Appeals for the Fifth Circuit.



Alan D. Bynum
Counsel of Record

5847 San Felipe, Suite 1450
Houston, Texas 77057-3009
Telephone: (713) 223-0032

Attorney for Petitioners

APPENDIX A

[Filed March 15, 2000]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20039

JASON AGUILLARD; ET.AL.,

Plaintiffs,

JASON AGUILLARD; O.L. HARRISON; WILLIAM A. HARRISON; SANDRA HARRISON; GLORIA HAMILTON,

Plaintiffs-Appellees,

v.

JOSEPH K. MCGOWEN; ET.AL.,

Defendants,

JOSEPH K. MCGOWEN; HARRIS COUNTY, TEXAS,

Defendants-Appellants

****

O.L. HARRISON, Surviving Parent of Susan Harrison White, Deceased; WILLIAM A. HARRISON, Surviving Parent of Susan Harrison White, Deceased; GLORIA HAMILTON, Individually and as next friend of Jason Aguillard; SANDRA HARRISON, Individually and on behalf of Estate of Susan Harrison White, Deceased,

Plaintiffs-Appellees,

v.

JOSEPH K. MCGOWEN; ET.AL.,

Defendants,

JOSEPH K. MCGOWEN; HARRIS COUNTY, TEXAS,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Texas

March 15, 2000

Before BARKSDALE, BENAVIDES and DENNIS, Circuit Judges.

BENAVIDES, Circuit Judge:

Appellants Joseph K. McGowen ("McGowen") and Harris County, Texas ("the County") appeal from a jury verdict holding them liable for the wrongful death of Susan Harrison White ("White") pursuant to 42 U.S.C. § 1983. The district court, giving preclusive effect to McGowen's Texas state criminal conviction for murder, forbade McGowen to present evidence on the issue of excessive force. Because the state court of appeals reversed McGowen's criminal conviction on appeal, we vacate and remand for a new trial on the merits. We further determine, pursuant to our sufficiency of the evidence analysis, that insufficient evidence supports the County's liability, and we therefore reverse and dismiss the County from the suit. Finally, we hold that White's sisters, appellees Sandra Harrison ("Harrison") and Gloria Hamilton ("Hamilton") lack standing in their individual capacities, and we thus dismiss them from the suit as individual plaintiffs.

I. *Factual and Procedural Background*

McGowen began working as a deputy for the Harris County Sheriff's Department on October 4, 1990. Sometime thereafter, the Sheriff's Department assigned him to patrol the Olde Oakes subdivision, where White, and her son, appellee Jason Aguillard ("Aguillard"), lived. Though the details are unclear, McGowen engaged in conduct during his patrol that White characterized as sexual harassment.

To assess her options in dealing with McGowen, White and a friend, Ray Valentine ("Valentine"), had dinner with

another Harris County Deputy Sheriff, Captain C.J. Harper ("Harper"). Harper claims that he advised her that she could complain to the Sheriff's office; if that yielded no results, she could resort to the Internal Affairs Division, the District Attorney or the FBI. White did not register any formal complaint about McGowen.

Several months later, on August 22, 1992, White and Valentine were having dinner at a restaurant when a friend of Aguillard's approached White and told her that McGowen was arresting Aguillard. White and Valentine immediately went to the site of the arrest and attempted to dissuade McGowen from arresting Aguillard. When their pleas fell on deaf ears, White yelled, "Im going to get you, [McGowen,] you son of a bitch."

McGowen had arrested Aguillard for possession of a stolen credit card and selling a stolen gun to an undercover officer. Instrumental in Aguillard's capture was Michael Schaeffer ("Schaeffer"), a childhood friend of Aguillard's, who apparently agreed to inform on Aguillard after McGowen pulled him over multiple times for traffic violations. McGowen had also arrested Schaeffer, but released him immediately.

Knowing of Schaeffer's arrest and prompt release, White called both Schaeffer's aunt and mother, inquiring about his whereabouts. White told Schaeffer's aunt, "I think Michael is an informant and in Houston an informant is a dead person." White repeated a similar statement to Schaeffer's mother. Though neither Schaeffer nor his mother took these statements seriously, Schaeffer reported them to McGowen, who replied that White was a "threat" and "needed" to go to jail.

Embellishing White's statements to the point of fabrication, McGowen obtained a warrant to arrest White for felony retaliation. McGowen set out to execute this warrant on August 24, 1992, at around midnight. McGowen and two other deputies woke White, who refused to open her front door. While McGowen sought permission to enter the house forcibly, White called 911. Having obtained the necessary approval, McGowen and the other deputies broke down the back door. McGowen ran into White's bedroom, where, he claims, she was sitting on the bed, pointing a gun at him. McGowen shot her three times, killing her.

McGowen was tried and convicted of murder; the trial court sentenced him to 15 years imprisonment.

Aguillard, White's parents, Hamilton and Harrison (individually and as next friend of Aguillard and White's estate respectively) brought a wrongful death action on March 9, 1993. During the trial, held from September 11-25, 1996, the district court *sua sponte* raised the issue of collateral estoppel, concluding that McGowen's criminal conviction was a final judgment which precluded McGowen from relitigating the issue of excessive force. The jury returned a verdict in favor of Aguillard in an amount exceeding $4 million.

McGowen and the County timely filed their appeal.

II. Standard of Review

We review a district court's decision to apply collateral estoppel for an abuse of discretion. *See Winters v. Diamond Shamrock Chem. Co.*, 149 F.3d 387, 391 (5th Cir. 1998).

We apply *de novo* review to a district court's denial of motion for judgment as a matter of law. *See Rutherford v. Harris County, Texas*, 197 F.3d 173, 178 (5th Cir. 1999). "In ruling on a rule 50 motion based upon sufficiency of the evidence, we `consider all of the evidence-not just that evidence with supports the non-mover's case-but in the light and with all reasonable inferences most favorable to the party opposed to the motion.'" *Information Communication Corp. v. Unisys Corp.*, 181 F.3d 629, 633 (5th Cir. 1999) (quoting *Boeing Co. v. Shipman*, 411 F.2d 365, 374 (5th Cir. 1969) (en banc)). The district court properly grants a Rule 50 motion for judgment as a matter of law only where the facts and inferences indicate a particular outcome so strenuously that reasonable minds could not disagree. *See Rutherford*, 197 F.3d at 179.

III. Collateral Estoppel

McGowen and the County argue that, because the 14th Court of Appeals, the state court reviewing McGowen's murder conviction, reversed it, the conviction is not a "final judgment" sufficient to exert a preclusive effect. Therefore, they claim, the district court denied McGowen a fair trial by barring his defense, and they urge us therefore to vacate and remand.

Aguillard retorts that the 14th Court of Appeals reversed McGowen's conviction for procedural reasons and specifically found that the evidence supported the verdict. A verdict reversed on a "technicality" for which sufficient evidence exists, Aguillard argues, should retain its preclusive impact.

We do not agree with Aguillard's argument that the verdict in the criminal case retains its preclusive effect. The 14th Court of Appeals undeniably reversed McGowen's conviction,[1] which unquestionably constituted the final judgment on which the lower court based its determination of collateral estoppel. A conviction overturned on appeal cannot constitute a final judgment for purposes of collateral estoppel. *See J.J. Gregory Gourmet Servs., Inc. v. Antone's Import Co.*, 927 S.W.2d 31, 34 (Tex. App. - Houston 1995, no writ) ("[W]hen the appellate court reverses [a] judgment, the finality necessary for claim or issue preclusion is eliminated.");

---

[1] The 14th Court of Appeals twice reversed McGowen's conviction. The first reversal occurred on April 10, 1997. The Texas Court of Criminal Appeals, however, vacated that judgment on October 28, 1998 and remanded to the 14th Court of Appeals, which again reversed McGowen's conviction on February 3, 2000.

It is anticipated that the State of Texas will seek discretionary review of the 14th Court of Appeals's decision with the Texas Court of Criminal Appeals.

Lulirama Ltd., Inc. v. Axcess Broadcast Servs., Inc., 128 F.3d 872, 876 n.2 (5th Cir. 1997).[2]

Aguillard's argument that a reversed conviction still exerts a preclusive effect is simply incorrect, based, as it is, on a misreading of *Scurlock Oil Co. v. Smithwick*, 724 S.W.2d 1, 6 (Tex. 1986), which holds only that a judgment retains its preclusive impact while on appeal. *See id.* ("[W]e . . . hold that a judgment is final for purposes of issue and claim preclusion 'despite the taking of an appeal unless what is called an appeal actually consists of a trial de novo.'" (quoting Restatement (Second) of Judgments § 13 cmt. f)). *Scurlock* does not involve a situation in which the judgment given preclusive effect has been reversed on appeal, as does the present circumstance. Indeed, *Scurlock* even states that "[a] judgment

---

[2] Even if the State were now to appeal the February 3, 2000 reversal of McGowen's conviction, during the pendency of the appeal, the reversed conviction cannot exert preclusive effect. *See Lulirama,* 128 F.3d at 876 n.2 ("The fact that an appeal is pending in a higher appellate court does not restore the preclusive effects of the reversed judgment." (quoting 18 Charles Alan Wright, et al., Federal Practice and Procedure § 4432, 302 (1981)).

For this reason, on February 4, 1998, the date on which the panel heard oral argument in this matter, McGowen's conviction exerted no preclusive effect-despite the pendency of its appeal before the Texas Court of Criminal Appeals-because the 14th Court of Appeals had already reversed it.

in a second case based on the preclusive effects of a prior judgment should not stand if the judgment is reversed." *Id.* We thus hold that Aguillard's arguments in favor of granting preclusive effect to McGowen's criminal conviction for murder are wholly without merit.

Because the practical import of the lower court's application of collateral estoppel was to deny McGowen the opportunity to present a defense to the complaint, we see no viable course of action but to vacate and remand for a new trial on the merits. Without a valid determination of the excessive force claim, neither the judgment against McGowen nor the County can be sustained.

IV. Sufficiency of the Evidence

The County argues that the evidence is not sufficient to support a finding that it was deliberately indifferent to White's right to be free from excessive force when it hired McGowen without discovering confidential information located in his file with the Houston Police Department, or without following up on the leads suggested by his polygraph test.

Aguillard naturally insists that the evidence is to the contrary.

Board of County Comm'rs of Bryan County, Oklahoma v. Brown, 520 U.S. 397 (1997) governs our inquiry into the sufficiency of the evidence. "Only where adequate scrutiny of an applicant's background would lead a reasonable policymaker to conclude that the plainly obvious consequence of the [hiring]

decision . . . would be the deprivation of a third party's federally protected right can the official's failure to adequately scrutinize the applicant's background constitute `deliberate indifference.'" *Id.* at 411. Any finding of culpability "must depend on a finding that this officer was likely to inflict the particular injury suffered by the plaintiff. The connection between the background of the particular applicant and the specific constitutional violation alleged must be strong." *Id.* at 412.

The specific facts involved in *Bryan County* are extremely instructive. There, Reserve Deputy Stacy Burns ("Burns") stood convicted of using excessive force when he wrested a woman from a car, badly damaging her knees in the process. Burns, who was the great-nephew of Sheriff Moore, Bryan County's Sheriff and policy-maker, had a criminal record that included arrests for driving while intoxicated, driving with a suspended license, resisting arrest, public drunkenness, and a conviction for assault and battery. Looking at this record, the Supreme Court held that Sheriff Moore's failure to examine Burns's criminal record did not "reflect [] a conscious disregard for a high risk that Burns would use excessive force in violation of respondent's federally protected right." *Id.* at 415-16.

Here, the record is far less suggestive of McGowen committing homicide than the record in *Bryan County* was of Burns committing battery. The record shows that McGowen threatened the mother of a juvenile with arrest, that he meddled in this mother's supervision of the child while he was off duty, and that the mother ultimately hired an attorney and threatened to obtain a restraining order against him. Colleagues at the

Houston Police Department reported that McGowen wanted to "ride where the women were," and a female colleague stated that she did not want to ride with him under any circumstances. The record also discloses a report that in March 1990, McGowen assaulted and pistol-whipped a teenage boy who was driving his car around McGowen's apartment complex. Significantly, McGowen was neither arrested for nor convicted of the alleged assault. But while all of this may indicate that McGowen was "an extremely poor candidate" for the County's police force, *id.* at 414, the record shows not one shred of solid evidence foreshadowing McGowen's tragic killing of White. McGowen had never been formally disciplined, and his informal discipline record included only the infractions of using the police radio for broadcasting personal messages and refusing to convey information to one party in a vehicular accident. McGowen had never wrongfully shot anyone before, nor did his record reveal him to be likely to use excessive force in general or possess in trigger-happy nature in particular. Certainly, the evidence of deliberate indifference in this case falls short of the quantum and quality of evidence presented in *Bryan County*, which the Supreme Court determined to be insufficient. In short, even when viewing the evidence, as we must, in the light most favorable to Aguillard, the record is bereft of evidence sufficient to impose liability on the County for wrongfully hiring McGowen. While the County may have been negligent in its employment decision, the magnitude of its error does not reach constitutional cognizance. We therefore hold that the district court erred in denying the County's Rule 50 motion for judgment as a matter of law, and we dismiss the County from this case.

V. Remaining Issues

Because our rulings on the collateral estoppel and Rule 50 issues constrain us to vacate and remand and dismiss the County, we need not address all of the remaining issues the parties raise, save with respect to the following: the question of whether White's sisters have standing in their individual capacities to bring a wrongful death suit.

McGowen and the County assert that White's sisters, Harrison and Hamilton, lack standing to bring this suit. Harrison and Hamilton respond by asking this court to acknowledge their right to bring this suit.

Pursuant to 42 U.S.C. § 1988, we must look to the state wrongful death statute to determine who has standing to bring a wrongful death claim under § 1983. The Texas Wrongful Death and Survival Statutes, Tex. Civ. Prac. & Rem. Code §§ 71.004 and 71.021, set forth the parties who can bring suit. The Estate of Susan White ("the Estate") has standing pursuant to the Survival Statute, § 71.021, and Harrison, as White's heir and the legal representative of the Estate, has standing to prosecute the action. *See Garcia v. Caremark, Inc.*, 921 S.W.2d 417, 421 (Tex. App. -Corpus Christi 1996, reh'g overruled); *Handley v. City of Seagoville, Texas*, 798 F. Supp. 1267, 1270 (N.D. Tex. 1992). Moreover, Hamilton, as an heir and interested party in the suit, may act as next friend for Aguillard. *See International & G.N. Ry. Co. v. Kuehn*, 8 S.W. 484, 485-86 (Tex. 1888).

Thus, the controversy focuses on whether Harrison and Hamilton have standing in their individual capacities. Neither Harrison nor Hamilton can cite any law from this Circuit supporting their bid for standing. As siblings are, based on the plain language of the statutes, plainly not within the scope of the Texas Wrongful Death and Survivor Statutes, we decline to permit Harrison and Hamilton to bring this action in their individual capacities. Upon retrial, then, Harrison and Hamilton must be dismissed as individual parties.

VI. Conclusion

We hold that a conviction reversed on appeal cannot function as a final judgment supporting the application of collateral estoppel. We therefore vacate and remand for a full trial on the merits.

We further hold that the evidence is insufficient to impose liability upon the County, and that the district court erred in refusing the County's motion for judgment as a matter of law. We therefore reverse and dismiss the County from the suit.

Finally, we hold that Harrison and Hamilton lack standing in their individual capacities. The district court erred in denying the County's motion to dismiss them as individual parties, and we therefore dismiss them from the suit in their individual capacities.

VACATED, REVERSED and REMANDED.

APPENDIX B

[Filed October 10, 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JASON AGUILLARD, ET.AL.,	§	
	§	
Plaintiffs,	§	
vs.	§	
	§	CIVIL ACTION
JOSEPH K. MCGOWEN, and,	§	NO. H-93-4110
HARRIS COUNTY, TEXAS	§	
	§	
Defendants.	§	

MEMORANDUM OPINION

INTRODUCTION

This civil rights case was brought by Jason Aguillard, Sandra Harrison, individually and as Executrix of the Estate of Susan Harrison White, O.L. Harrison and William Harrison.

The plaintiffs' claim that the defendants, Joseph K. McGowen and Harris County violated rights guaranteed to them by Title 42 U.S.C. §1983, 1988 and the Fourth, Fifth, Eighth and Fourteenth Amendments to the federal constitution. In addition, the plaintiffs' claim violation of state law under the

Wrongful Death and Survivors Statute and under the common law of negligence. In the opinion of the court, the state law claims, to the extent legally applicable to these facts, are subsumed by the civil rights claims and, therefore, the Court abstains from hearing them.

FACTS GIVING RISE TO SUIT

On or about August 25, 1992, the defendant, Joseph Kent McGowen, while acting as a deputy sheriff of Harris County, shot and killed Susan Harrison White in her bedroom. The defendants claim that probable cause existed for the authority exercised on the occasion by way of an arrest warrant and Mrs. White's conduct at the time that the warrant was being executed.

Two days earlier, deputy McGowen arrested Jason Aguillard, the decedent's son, for attempting to sell a weapon to an undercover law enforcement officer. According to deputy McGowen, Jason had agreed to sell one or more weapons to an unknown person by way of a confidential informer. The confidential informer, Michael Shaffer, was a childhood friend of Jason's and, in fact, had lived in Jason's home on occasion. Deputy McGowen enlisted the help of Shaffer in setting up the gun sale. On or about the 22nd day of August 1992, when the sale was to occur, deputy McGowen arrested Jason along with Shaffer.

At the time that Jason was arrested, Mrs. White and a male friend were having dinner with one of deputy McGowen's superior officers. Sh shared with him her fears that deputy McGowen had a vendetta against her and was intending to

physically harm her. However, before dinner could be completed, news reached Mrs. White that Jason had been stopped by deputy McGowen and was about to be arrested as a result of the undercover investigation. When Jason's mother heard about the arrest, she and her male friend proceeded to the arrest location.

Efforts to persuade deputy McGowen that Jason should not be taken to jail were unsuccessful. Efforts at the jail to get Jason released that evening were also unsuccessfully and a bond was posted for his release the following day. In the meantime, Mrs. White began investigating the circumstances surrounding the arrest of Jason and the absence of Shaffer.

THE ALLEGED THREAT BY SUSAN WHITE

The morning after Jason's arrest, Mrs. White called relatives of Michael Shaffer, inquiring about Shaffer's whereabouts. She knew that Shaffer had been taken into custody along with Jason at the scene of the arrest and that he was not in jail. In conversation with Sherry Ann Maultsby, Shaffer's aunt, Mrs. White stated that she was concerned that Shaffer was an informant and had a hand in setting Jason up. Allegedly, Mrs. White then stated that "I think Michael [Shaffer] is an informant and in Houston, an informant is a dead person." Later, Mrs. White telephoned Jeannie L. Jaques, Shaffer's mother. According to her, Mrs. White again stated that "...informants in Houston die".

Based on these reports, deputy McGowen sought and secured a warrant for the arrest of Mrs. White for the felony

charge of "Retaliation". The probable cause, stated by deputy McGowen, for the arrest warrant reads:

> ..."Affiant believes and has reason to believe that the Defendant Susan White committed the offense of retaliation in Harris County, Texas on August 23, 1992."
>
> "Affiant spoke with Jeannie Jaques...and on August 23, 1992...[D]uring [a] conversation the Defendant told Jaques that she [Defendant] knew that Jaques' son was an informant who set up Defendant's son while acting as an informant and that informants in Houston don't live long. Jaques believed that White intended to inflict serious harm or death on her son as a result of the statement made to her..."

After securing the warrant for the arrest of Mrs. White, deputy McGowen proceeded to her residence around midnight on August 24, to arrest her. When he was unsuccessful in convincing Mrs. White to open her door and let him in, deputy McGowen forcibly entered the house and fatally wounded Mrs. White by shooting her. Subsequently, deputy McGowen was charged and convicted of murdering Mrs. White.

NECESSARY PROOF

This civil rights case came to trial before the Court and a jury on September 11, 1996. At the outset, the Court questioned counsel for both sides whether there was a disputed fact issue concerning whether deputy McGowen was

unjustified in using deadly force in an effort to arrest Mrs. White. When the defendants disagreed, the Court reviewed court exhibits and determined that no disputed fact issue existed regarding the elements necessary to be proved that deputy McGowen had used deadly force in violation of the law in executing the warrant for the arrest of Mrs. White.

DISCUSSION

In order for the plaintiffs to prove a *prima facie* case of "excessive force" against deputy McGowen, the plaintiff must prove that deputy McGowen intentionally committed an act(s) that violated one or more of the plaintiffs' federal Constitutional rights, (the right of Susan White to be free from the use of excessive force during an arrest) while acting "under color" of the authority of Harris County, which act(s) was the legal cause of the plaintiffs' damages. *See Post v. City of Fort Lauderdale*, 7 F.3d 1552 modified 14 F.3d 583. (11th Cir. 1993).

Without doubt, deputy McGowen was acting "under color" of authority because, it was in his capacity as a deputy sheriff that he secured an arrest warrant and proceeded to execute it. It is also undisputed that the legal cause of the plaintiffs' damages is the fatal shooting that occurred on the morning of August 25, 1992. In this regard, and for supplying the element of intent, the Court relies upon the jury verdict in the murder case brought against deputy McGowen.

In cause number 647853 *State of Texas v. Joseph K. McGowen*, the trial judge instructed the jury that "if [McGowen] intentionally or knowingly cause[d] the death of

[Susan White]; or if [McGowen] intend[ed] to cause serious bodily injury and intentionally or knowingly commit[ted] an act clearly dangerous to human life that cause[ed] the death of [Susan White]," then the jury must find McGowen guilty of murder. The jury found McGowen guilty as charged.

With these findings, the jury resolved that McGowen's conduct was intentional and the outcome were a result of his "conscious objective or desire", to kill Mrs. White. The jury went on to find that there was no justification for the use of deadly force by deputy McGowen and that he had no basis upon which to believe that the arrest was lawful, or that he was authorized to use deadly force in effecting the arrest. Finally, the jury determined that deputy McGowen was not under attack at the hands of Mrs. White and, therefore, had no reason to fear injury to himself, thereby requiring him to resort to the use of deadly force in self defense.

Both defendants dispute that the "verdict" in the criminal case involving deputy McGowen is conclusive as to the necessary elements of § 1983 case as to deputy McGowen. The Court disagrees, and holds that a jury finding, beyond a reasonable doubt, that deputy McGowen intentionally used deadly force during an arrest establishes a *prima facie* case that the force used was excessive.

The plaintiffs, by offering into evidence the verdict and judgment establishing that deputy McGowen had been convicted of murder, establishes a *prima facie* case of the "use of excessive force" as required by the law. Although permitted an opportunity to do so, deputy McGowen was not prepared to offer and did not offer any factual evidence not previously

presented to the state jury and determined conclusively against him.

As a general rule, a judgment is conclusive, not only on the issues decided but also on other issues or matters that must be decided in arriving at the judgment. *See* Wright, Miller & Cooper Federal Prac. & Proc.: Jurisdiction §4416 *et. seq.* The exhibits admitted from the criminal case show that the verdict reached by the jury could not have been reached without the jury also determining that deputy McGowen used and intended to use excessive force when he shot and killed Mrs. White.

Also, Harris County has no right to relitigate the McGowen facts as a part of its defense to the plaintiffs' claim that Harris County acted with "deliberate indifference" in several respects in hiring and supervising deputy McGowen. Unmistakably, the facts concerning Harris County's liability are intertwined with those concerning deputy McGowen. However, the proof required of the plaintiffs against Harris County is different than the proof necessary against deputy McGowen and the jury was appropriately instructed.

The Court holds that it is unnecessary to relitigate the civil rights liability issue as it relates to deputy McGowen.

It is so Ordered.

Signed this 8th day of October, 1996.

/s/_____
KENNETH M. HOYT
United States District Judge

APPENDIX C

[Filed April 20, 2000]

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 97-20039

JASON AGUILLARD; ET.AL.,

Plaintiffs,

JASON AGUILLARD; O.L. HARRISON; WILLIAM A. HARRISON; SANDRA HARRISON; GLORIA HAMILTON,

Plaintiffs-Appellees,

v.

JOSEPH K. MCGOWEN; ET.AL.,

Defendants,

JOSEPH K. MCGOWEN; HARRIS COUNTY, TEXAS,

Defendants-Appellants

****

Court of Appeals Order Denying
Petition for Rehearing, 4/20/00

O.L. HARRISON, Surviving Parent of Susan Harrison White, Deceased; WILLIAM A. HARRISON, Surviving Parent of Susan Harrison White, Deceased; GLORIA HAMILTON, Individually and as next friend of Jason Aguillard; SANDRA HARRISON, Individually and on behalf of Estate of Susan Harrison White, Deceased,

Plaintiffs-Appellees,

v.

JOSEPH K. MCGOWEN; ET.AL.,

Defendants,

JOSEPH K. MCGOWEN; HARRIS COUNTY, TEXAS,

Defendants-Appellants.

Appeals from the United States District Court
for the Southern District of Texas, Houston

ON PETITIONS FOR REHEARING

Before BARKSDALE, BENAVIDES and DENNIS, Circuit Judges.

Court of Appeals Order Denying
Petition for Rehearing, 4/20/00

PER CURIAM:

IT IS ORDERED that the petitions for rehearing filed in the above case are DENIED.

ENTERED FOR THE COURT:

/s/_____
United States Circuit Judge

REHG-13

APPENDIX D

[Filed January 31, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

JASON AGUILLARD, ET.AL.,	§	
	§	
Plaintiffs,	§	
vs.	§	
	§	CIVIL ACTION
JOSEPH K. MCGOWEN, and,	§	NO. H-93-4110
HARRIS COUNTY, TEXAS	§	
	§	
Defendants.	§	

AMENDED FINAL JUDGMENT

Pursuant to the jury verdict and the rulings of the Court, the plaintiffs shall have judgment against the defendants jointly and severally as follows:

A.	1.	Jason Aguillard	$ 1,500,000.00
	2.	O.L. Harrison	900,000.00
	3.	William Harrison	900,000.00
	4.	Gloria Hamilton	200,000.00
	5.	Sandra Harrison	300,000.00
	6.	Estate of Susan White	520,000.00

B. As a punitive damage award, and in addition to the damages awarded in section "A", the plaintiffs' shall have judgment against Joseph K. McGowen, individually as follows:

1.	Jason Aguillard	$ 500,000.00
2.	O. L. Harrison	100,000.00
3.	William Harrison	100,000.00
4.	Gloria Hamilton	100,000.00
5.	Sandra Harrison and Estate of Susan White	200,000.00

C. An Attorney's Fee $ 193,750.00

D. Costs of Court and Out-of-Pocket Expenses $ 26,949.62

This is a Final Judgment.

Signed this 31st day of January, 1997.

/s/_____
KENNETH M. HOYT
United States District Judge